IN THE HIGH COURT OF DELHI

Crl.M.C. No.2451/2005

M/s.Ritesh Enterprises .....Petitioner

VERSUS

$ Enforcement Directorate ..... Respondent

Crl.M.C. No.2462/2005

Rakesh Gondal .....Petitioner

VERSUS

$ Enforcement Directorate ..... Respondent

Crl.M.C. No.2488/2005

Rajesh Sood .....Petitioner

VERSUS

$ Enforcement Directorate ..... Respondent

Crl.M.C. No.2569/2005

Smt.Santwanter Gondal .....Petitioner

VERSUS

$ Enforcement Directorate ..... Respondent

! Present : Mr.Puneet Ahluwalia for the petitioners.
Ms.Renu Bansal for the respondent.

RESERVED ON: 17.09.2007

% DATE OF DECISION: 03.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. M/s.Ritesh Enterprises is a partnership firm. Rakesh Gondal, Rajesh Sood and Ms.Santwanter Gondal are its 3 partners. By way of the above 4 captioned petitions, the partnership firm and its 3 partners pray that the complaint filed against them by the Enforcement Directorate under Section 57 FERA and Section 49(3)(4) of FEMA pending before the learned Additional Chief Metropolitan Magistrate, Delhi be quashed.

2. It is stated in the complaint that on 28.4.1995 the Enforcement Directorate imposed a penalty of Rs.2,50,000/- on accused persons which was recoverable from them jointly and that the penalty was not deposited. It was stated that the adjudication order dated 28.4.1995 was passed inasmuch as the accused persons had contravened provisions of the Foreign Exchange Regulation Act 1973.

3. As per the adjudication order it stands recorded that the accused persons have contravened Sections 18(2)(3) of the Foreign Exchange Regulation Act 1973.

4. The adjudication order records that the firm M/s.Ritesh Enterprises had outstanding export unrealized proceeds in sum of Rs.6,35,400/- and as per letter issued on 31.7.1989 received from the Reserve Bank of India the firm had applied for a right-off/extension of time to the Reserve Bank of India for realizing the outstanding export proceeds and that in respect of outstanding realizable amount in sum of Rs.3,82,857.50 out of Rs.6,35,400/- the Reserve Bank of India had sought certain information from the firm which was not supplied.

5. The adjudication order further records that on 19.11.1990, with reference to the information received by the department from the Reserve Bank of India pertaining to export proceeds in sum of Rs.3,82,857/- vide memorandum No.T 4/288/DZ/90/DD show cause notice was issued to the firm and its 3 partners. A reply was received to the memorandum dated 19.11.1990 on 13.2.1991 from the firm informing that pertaining to the pending realization of Rs.3,82,857/- only Rs.14,441/- was balance because in the record wrong amount

was noted. Even freight part was reflected as amount realizable.

6. The order records that in support of the stand taken in the reply and pertaining to a certification from the banker that Rs.3,68,416/- had been received, the department wanted a clarification for which adjudicating authority granted opportunities to the firm to give the necessary clarifications on 25.2.1992, 27.11.1992, 17.12.1993, 31.10.1994, 29.10.1994 and 28.2.1994. The adjudication order further records that on no date was any clarification given.

7. The adjudication order records that the clarification wanted was in light of the fact that certificate of the banker was not clear and that the department had wanted to know as to against which GRI form, what payment was received.

8. The adjudication order concludes by noting that since the firm and its partners have not submitted GRI realization certificate and in respect of repeated opportunities have failed to clarify with respect to the ambiguous certificate issued by the banker, there was enough material to hold that there was a contravention of Section 18(2)(3) of FERA 1973. So holding, penalty in sum of Rs.2,50,000/- was imposed.

9. Challenging the complaint which has been filed it is

urged in the petition that the adjudication order is contrary to law. 5 grounds have been urged in all petitions. The same are as under:-

A. That the order of the Adjudicating Authority is based on surmises and conjectures and despite the fact that the petitioner had realized the entire sale proceeds and had submitted all the documents pertaining thereof, the Adjudicating Authority imposed the penalty, which is absolutely illegal and in contravention of the statute.

B. That the Adjudicating Authority failed to appreciate the facts mentioned in letters dated 10.12.90 and 13.2.91 addressed to the Enforcement Department, where by it was clear that the petitioner had realized sufficient sale proceed leaving balance only in thousands. Copies of the letters are Annexure C and D.

C. That the Adjudicating Authority failed to appreciate the fact that even out of the balance amount of Rs.14,441/- an amount of Rs.14,000/- was also realized, and this fact is quite clear from the certificate dated 6.3.92 of the Bank, and the

petitioner's letter dated 6.3.92. Copy of the letters are annexed as Annexure E & F.

D. That the petitioner vide letter dated 16.11.92 finally also informed the Enforcement Directorate that the payments have already been clear, and the required bank certificates have already been submitted about 8 months back, still the Adjudicating Authority failed to appreciate the correctness of the facts. Copy of the letter is annexed herewith as Annexure G.

E. That all the pending outstanding sale proceeds were realized as under:-

Total outstanding	:	Rs.3,82,857.50
Amounts realized (Banker's certificate dt.13.2.91)	:	Rs,3,68,416.00
Amount realized (Banker's certificate dt.6.3.92)	:	Rs.14,000.00
Total amount realized	:	Rs.3,82,416.00
Balance outstanding	:	Rs.441.50

Here it is pertinent to mention that even the Reserve Bank of India allows realization of 10% of the total export amount, and the balance unrealized amount is even less than 1% of the total outstanding.

10. It is not in dispute that the adjudication order has not been challenged by way of further proceedings by the petitioners. It has attained finality.

11. Thus, it is impermissible to challenge the adjudication order in the instant petitions.

12. Of course, at the trial it would be open to the petitioners to prove whatever facts they intend to prove.

13. It would be relevant to note that the complaint in question is not on account of the same facts which have constituted the gravement of the allegations in the adjudication proceedings but is based on the fact that the penalty imposed pursuant to the adjudication order has not been paid.

14. I have my doubts whether in view of the fact that the adjudication order has attained finality, petitioners can question the legality of the adjudication order before the learned Trial Judge.

15. But I hasten to add that this is my prima facie view and not a conclusive finding. Needless to state, the learned Metropolitan Magistrate would decide the issue in view of the evidence led.

16. Though not urged in the petition, much less predicated as a ground, an oral plea was urged that the

adjudication order has not been served upon the appellants. Counsel stated that in that view of the matter, where was the occasion for the appellants to challenge the adjudication order under the statute.

17. I am afraid, said submission lost its punch for the reason when summoning order was received by the petitioners pursuant to the complaint lodged before the learned Additional Chief Metropolitan Magistrate, since adjudication order has been referred to in the complaint, obviously, petitioners gained knowledge that an adjudication order has been passed against them. Indeed, along with the petition, copy of the adjudication order has been filed. Thus, at that stage, stating that petitioners gained knowledge of the adjudication order when summoning order was received by them, seeking condonation of delay or otherwise pleading that limitation would commence when adjudication order is served upon them, the adjudication order could be challenged by the petitioners by way of remedies under the statute, but they have not done so.

18. I may incidentally note, as recorded in the adjudication order, petitioners had failed to give the necessary clarifications spread over 3 years when matter was being adjourned by the adjudicating officer.

19. It reveals the utter carelessness of the petitioners.

20. I find no merits in the petitions. The same are dismissed.

21. LCR be returned.

October 03, 2007 (PRADEEP NANDRAJOG)
dk JUDGE